



## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0054]

#### Hours of Service; United Parcel Service Inc.; Application for Exemption Renewal

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of provisional renewal of exemption; request for comments.

**SUMMARY:** FMCSA announces its decision to provisionally renew a United Parcel Service, Inc. (UPS) exemption from various provisions of the mandate to use electronic logging devices (ELD). FMCSA previously granted the exemption to allow (1) all motor carriers and drivers that use portable, driver-based ELDs to record engine data only when the driver is in a commercial motor vehicle (CMV) and the engine is powered, and (2) all motor carriers to configure an ELD with a yard-move mode that does not require a driver to re-input yard-move status every time the tractor is powered off. The Agency has determined that renewal of the temporary exemption would not have an adverse impact on safety, and that a level of safety equivalent to or greater than that provided by the regulation would be maintained. The exemption renewal is for 5 years.

**DATES:** This renewed exemption is effective October 21, 2022 and expires on October 21, 2027. Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2017-0054 by any of the following methods:

- **Federal eRulemaking Portal:** [www.regulations.gov](https://www.regulations.gov). See the **Public Participation and Request for Comments** section below for further information.

- **Mail:** Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- **Fax:** (202) 493-2251.

Each submission must include the Agency name and the docket number (FMCSA-2017-0054) for this notice. Note that DOT posts all comments received without change to [www.regulations.gov](http://www.regulations.gov), including any personal information included in a comment. Please see the **Privacy Act** heading below.

**Docket:** For access to the docket to read background documents or comments, go to [www.regulations.gov](http://www.regulations.gov) at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

**Privacy Act:** In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov) As described in the system of records notice DOT/ALL 14 – FDMS, which can be reviewed at <https://www.transportation.gov/privacy>, the comments are searchable by the name of the submitter.

**FOR FURTHER INFORMATION CONTACT:** Mr. Luke Loy, Vehicle and Roadside Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA, at (202) 366-0676 or by e-mail at [luke.loy@dot.gov](mailto:luke.loy@dot.gov). If you have questions on

viewing or submitting material to the docket, contact Dockets Operations at (202) 366-9826.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation and Request for Comments**

FMCSA encourages you to participate by submitting comments and related materials.

#### Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2017-0054), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to [www.regulations.gov](http://www.regulations.gov) and enter the docket number ("FMCSA-2017-0054") in the "Keyword" box, then click "Search." When the new screen appears, click on the "Comment" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

### **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b)(2) and 49 CFR 381.300(b) to renew an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) for a 5-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.” UPS has requested a five-year extension of the current exemption in Docket No. FMCSA-2017-0054.

### **III. Background**

#### *Current Regulatory Requirements*

Section 395.26(b) of title 49 of the Code of Federal Regulations requires an ELD to automatically record the following data elements; (1) Date; (2) Time; (3) CMV geographic location information; (4) Engine hours; (5) Vehicle miles; (6) Driver or authenticated user identification; (7) Vehicle identification data; and (8) Motor carrier identification data. In addition, an ELD is required to automatically record a number of the data elements specified above at certain events, to include (1) when a driver indicates a change of duty status under section 395.24(b) (see section 395.26(c)), and (2) when an authorized user logs into or out of an ELD (see section 395.26(g)).

Section 395.28(a) of title 49 of the Code of Federal Regulations permits a motor carrier to configure an ELD to authorize a driver to indicate that the driver is operating a CMV under certain special driving categories, including (1) authorized personal use, and (2) yard moves. Section 395.28(a)(2) requires a driver to select the applicable special driving category on the ELD before starting operations in that status, and to deselect it when the indicated status ends. Section 4.3.2.2.2(e) of appendix A to subpart B of part 395 requires a driver to select the applicable special driving category on the ELD before starting operations in that status, and to deselect it when the indicated status ends. Section 4.3.2.2.2(e) of appendix A to subpart B of part 395 requires a driver to reset the yard-

move status to “none” if the ELD or CMV’s engine goes through a power-off cycle (ELD or CMV’s engine turns off and then on).

*Original Exemption and Application for Renewal of Exemption*

In 2017, FMCSA granted a five-year exemption to UPS and all motor carriers and drivers from two provisions of the FMCSRs under specified terms and conditions (82 FR 48883, Oct. 20, 2017). The exemption expires on October 20, 2022. The exemption allows CMV drivers using portable electronic ELDs to manually record data that would otherwise be required to be automatically recorded when a driver indicates a change of duty status or logs in or out of an ELD (49 CFR 395.26(c) and 395.26(g)). Under the exemption, those requirements do not apply to a driver using a portable ELD unless the driver is in the CMV with the engine powered. The exemption also allows motor carriers to configure their ELD devices so that a driver can enter yard moves under 49 CFR 395.38(a)(1)(ii) without complying with section 4.3.2.2.2(e) of appendix A to subpart B of part 395 which requires a driver’s yard move status to re-set to “none” if the ELD or CMV’s engine goes through a power-off cycle or the CMV’s engine turns off then on.

UPS requested renewal of the exemption on the same basis as stated in its original application, noting that the conditions which necessitated the exemption still exist, and that it has safeguards in place to ensure an equivalent level of safety. For example, regarding the automatic recording of data elements portion of the exemption, UPS stated that its drivers are generally hourly drivers and use portable ELD devices and perform a significant amount of work outside of the CMV. UPS also noted that drivers generally use the ELD device to “punch in” while they are still in the building and then remain on the clock and logged in after they leave the CMV until they return to the dispatch office. Automatic logging of events is not practicable for drivers using portable EDLs because the ELD device is not synchronized to the engine’s electronic

control module (ECM) when the driver is outside the CMV. UPS notes that renewal of the exemption would provide an equivalent level of safety because there will be no impact on recording driving time and the data elements that will not be automatically recorded by the ELD at a change in duty status or log on/log out while away from the CMV are not critical provided the driver properly annotates the ELD record to indicate the proper duty status as required by the regulation and the exemption.

Regarding the yard moves portion of the exemption, UPS noted that its feeder drivers are required to complete yard moves as part of their scheduled work and that the drivers can be assigned yard duty for a portion of their shift which may require moving as many as 10 loads per hour within the yard. UPS noted that as a safety precaution its drivers are required to remove the keys from the CMV each time they exit and that the driver will power the tractor down to couple and uncouple a trailer. UPS stated that an average UPS site has over 90 drivers with the majority completing several yard moves a day. Complying with the specifications in 4.3.2.2.2(d) of appendix A to subpart B of part 395, would require them to enter manual changes of duty status as many as 20 times in an hour. UPS estimated that use of the current exemption has resulted in significant cost savings to it without any degradation in safety. It notes that by continuing to comply with the conditions of the original exemption motor carriers using this exemption will ensure that the “yard move” mode is properly reserved for yard moves and that an equivalent level of safety will be achieved. A copy of UPS’ application to renew the exemption is included in the docket referenced at the beginning of this notice.

#### **IV. Equivalent Level of Safety**

In its 2017 decision approving the original exemption application, FMCSA noted that the December 2015 ELD final rule (80 FR 78292) provides a performance-based standard for ELDs and that motor carriers may select from a wide variety of ELDs within

the marketplace of ELD providers. This includes the type of portable ELD units used by UPS.

The ELD functions required by the ELD rule are limited to automatically recording all driving time, and intermittently recording certain other information—including recording specified data elements when a driver changes duty status (section 395.26(c)) and logs in/logs out of an ELD (section 395.26(g)). For ELDs that are physically installed in a vehicle, drivers typically log in/log out of the ELD or change duty status while the vehicle is powered, and the required data elements in section 395.26 are readily recorded by the ELD because the ELD is synchronized with the engine's ECM.

However, in situations where a driver is using a portable, driver-based ELD, a driver will typically log in/log out or change duty status in the ELD at a location away from the vehicle (*i.e.*, in the dispatch office as described by UPS), prior to preparing to drive the vehicle and without the vehicle being powered. In these situations, FMCSA determined that it is not practicable for the ELD to automatically record the data elements required by section 395.26(c) and section 395.26(g), as the ELD is not synchronized with the engine's ECM at that point. In the final ELD rule, FMCSA stated “FMCSA clarifies that the ECM data or ECM connectivity data must only be captured when the engine is powered, but the ELD is not prohibited from recording information, if desired, when the engine is off.”

Based on the above, FMCSA determines that it is not necessary for portable, driver-based ELDs to record the data elements required in section 395.26(c) and section 395.26(g) when the driver is not in the CMV, with the engine powered. In instances where a driver using a portable, driver-based ELD logs in/logs out or changes duty status away from the vehicle and without the vehicle powered, the driver will simply annotate the ELD record to indicate the appropriate duty status in accordance with section 395.30.

Any time the driver is in the vehicle and the vehicle is powered, the portable, driver-based ELD is required to automatically record the data elements specified in section 395.26. FMCSA agreed that safety would not be diminished because (1) there will be no impact on the recordation of driving time, and (2) the data elements that will not be recorded by the ELD at a change of duty status or log on/log out of the ELD while away from the vehicle are not critical if the driver properly annotates the ELD record to indicate the proper duty status as required.

FMCSA agrees that permitting all motor carriers to configure ELDs with a yard-move mode that does not require a driver to re-input yard move status every time the tractor is powered off will ensure that drivers operating under the yard-move status will achieve a level of safety that is equivalent to or greater than the level that would be obtained under the regulation. Allowing multiple power-off cycles for yard moves is consistent with what is currently permitted for the other special driving category, personal conveyance.

In its application for renewal, UPS states that it has not discovered any safety issues while operating under the exemption and that it will continue to monitor its safety data. FMCSA is unaware of any evidence of a degradation of safety attributable to the current exemption for UPS or any other motor carriers and drivers. FMCSA concludes that provisionally extending the exemption granted on October 20, 2017, for another five years, under the terms and conditions in this exemption renewal, will likely achieve a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

## **V. Exemption Renewal Decision**

### **A. Grant of Exemption Renewal.**

FMCSA provisionally renews the exemption for a period of five years subject to the terms and conditions of this decision and the absence of public comments that would



cause the Agency to terminate the exemption under section V.F. below. This exemption renewal is otherwise effective October 21, 2022, through October 21, 2027, 11:59 p.m. local time, unless renewed or rescinded.

### **B. Applicability of Exemption**

The exemption allows (1) all motor carriers and drivers that use portable, driver-based ELDs to record engine data only when the driver is in a CMV and the engine is powered, and (2) all motor carriers to configure an ELD with a yard-move mode that does not require a driver to re-input yard-move status every time the tractor is powered off.

### **C. Terms and Conditions**

When operating under this exemption, motor carriers and drivers are subject to the following terms and conditions:

- (1.) All motor carriers and drivers using portable, driver-based ELDs are exempt from the requirements of section 395.26(c) and section 395.26(g) unless the driver is in the CMV with the engine powered. When a driver using a portable, driver-based ELD changes duty status or logs in/logs out of the ELD away from the vehicle and without the vehicle powered, the driver is required to annotate the ELD record to indicate the appropriate duty status in accordance with section 395.30. When the driver is in the CMV, and the CMV is powered, the portable, driver-based ELD is required to automatically record the data elements specified in section 395.26.
- (2.) A motor carrier is permitted to configure an ELD so that a driver can select “yard moves” in accordance with section 395.28(a)(1)(ii) without complying with section 4.3.2.2.2(e) of aAppendix A to subpart B of part 395, which requires a driver’s yard-move status to reset to none if the ELD or CMV’s engine goes through a power-off cycle (ELD or CMV’s engine turns off and then on).

However, the ELD must switch from “yard move” status to “driving” status if (1) the driver inputs the “driving” mode; (2) the vehicle exceeds a speed of 20 mph; or (3) the vehicle exits a geo-fenced motor carrier facility. For the reasons discussed above, FMCSA believes that the level of safety that will be achieved with the exemptions will likely be equivalent to, or greater than, the level of safety achieved without the exemptions.

(3.) Motor carriers and drivers must comply with all other applicable Federal Motor Carrier Safety Regulations (49 CFR part 350-399).

(4.) The drivers must provide this exemption document to enforcement officials upon request.

#### **D. Preemption**

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

#### **E. Notification to FMCSA**

All motor carriers and drivers must notify FMCSA within 5 business days of any crash (as defined in 49 CFR 390.5) involving any of its CMVs operating under the terms of this exemption. The notification must include the following information:

- (a) Name of the exemption: “UPS Renewal 2022”;
- (b) Date of the crash;
- (c) City or town, and State, in which the crash occurred, or closest to the crash scene;
- (d) Driver’s name and license number;
- (e) Vehicle number and State license number;

- (f) Number of individuals suffering physical injury;
- (g) Number of fatalities;
- (h) The police-reported cause of the crash;
- (i) Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations;
- (j) A copy of the accident report, if available; and
- (k) The driver's total driving time and total on-duty time prior to the crash.

Reports filed under this provision shall be e-mailed to [MCPSV@DOT.GOV](mailto:MCPSV@DOT.GOV).

#### **F. Termination**

FMCSA does not believe that UPS and other motor carriers and drivers covered by this exemption renewal will experience any deterioration of their safety record. The exemption will be rescinded if: (1) motor carriers and drivers operating under the exemption fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objects of 49 U.S.C. 31136(e) and 31315.

#### **VI. Request for Comments**

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on UPS, Inc.'s application for renewal of the exemption to allow (1) all motor carriers and drivers that use portable, driver-based ELDs to record engine data only when the driver is in a CMV and the engine is powered, and (2) all motor carriers to configure an ELD with a yard-move mode that does not require a driver to re-input yard-move status every time the tractor is powered off. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date

will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

**Robin Hutcheson,**  
*Administrator.*

[FR Doc. 2022-23312 Filed: 10/25/2022 8:45 am; Publication Date: 10/26/2022]